

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

ROBERT REYES, JR.,

Petitioner,

v.

Case No: 6:21-cv-431-JA-DCI

SECRETARY, DEPARTMENT OF
CORRECTIONS and ATTORNEY
GENERAL, STATE OF FLORIDA,

Respondents.

ORDER

This cause is before the Court on the Petition for Writ of Habeas Corpus ("Petition," Doc. 1) filed by Robert Reyes, Jr.¹

Petitioner previously filed case number 6:12-cv-334-Orl-19-GJK which attacked the same 2005 convictions and sentences that Petitioner challenges in the present case. That case was dismissed with prejudice on April 16, 2013.

Thus, the Petition is a second or successive application.

¹ Although Petitioner labels the Petition as a Petition for Writ of Habeas Corpus Ad Subjiciendum Extraordinary, a petition filed by a person restrained by a state conviction is governed by 28 U.S.C. § 2254. Petitioner may not circumvent the requirements of § 2254 by labeling his petition in a different manner. *See Medberry v. Crosby*, 351 F.3d 1049, 1054, 1062 (11th Cir. 2003); *McDowell Bey v. Sec'y, Dep't of Corr.*, No. 8:16-cv-1432-T-23TGW, 2016 WL 4620197, at *1 (M.D. Fla. Sept. 6, 2016). Therefore, the Court will construe the Petition as one filed pursuant to 28 U.S.C. § 2254.

Before Petitioner will be permitted to file a second or successive habeas corpus application in this Court, he must move in the Eleventh Circuit Court of Appeals for an order authorizing the district court to consider the application. *See* 28 U.S.C. § 2244(b)(3)(A). Consequently, this case will be dismissed without prejudice to allow Petitioner the opportunity to seek authorization from the Eleventh Circuit Court of Appeals.

Petitioner should be aware that § 2244(b)(2) limits the circumstances under which the Court of Appeals will authorize the filing of a second or successive habeas corpus petition. Furthermore, 28 U.S.C. § 2244(d) imposes a time-limitation on the filing of a habeas corpus petition. Petitioner, in seeking relief in the Court of Appeals, should be cognizant of these provisions.

Accordingly, it is **ORDERED** and **ADJUDGED** as follows:

1. The Petition for Writ of Habeas Corpus (Doc. 1) is **DENIED** without prejudice.
2. This case is **DISMISSED** without prejudice.
3. The Clerk of the Court is directed to close this case and to send Petitioner an "Application for Leave to File a Second or Successive Habeas

Corpus Petition 28 U.S.C. § 2244(b) By a Prisoner in State Custody" form.

DONE and **ORDERED** in Orlando, Florida on March 12th, 2021.



JOHN ANTOON II
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Unrepresented Party